IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

COMPANY PETITION NO.700 OF 2003

. In the matter of Companies Act, 1956

AND

. In the matter of Section 433 and 434 of the Companies Act, 1956

Dayaram Mouraya ..... Petitioner.

N.P. Pandit with Hemant Sethi for the petitioner.

Shri G.S. Godbole for the company.

CORAM: S.U. KAMDAR, J.

DATE : 11TH FEBURARY, 2005.

P.C. :

1. The present petition under section 433 and 434 of the Companies Act-I of 1956 is filed for winding up of the respondent company. The claim in the present petition is of approximately Rs.2,07,232/-. The claim arises in respect of a work undertaken by the petitioner for carrying out interior decoration of the rooms belonging to the respondent company and

in a five star hotel known as Le-Meridian at Pune.

2. In the present case admittedly there is no written contract for the purpose of carrying out the work of interior decoration. There are disputes raised by the respondent company pertaining to per room rate which is agreed between the parties.

3. There are also disputes raised in respect of the additional work carried out of the entitlement of the amount in respect thereof by the petitioner. Though the petitioner has relied upon a certificate issued by the architect but the respondent company has not accepted the same and has raised various disputes. There are also disputes pertaining to the completion of the contract within the stipulated period of time and the amount paid in respect thereof.

4. It is an admitted position that out of the final bill certified for Rs.6,99,49,702.00/- an amount of Rs.4,92,17,470.00/- has been paid. This final bill is based on the rates of by the petitioner

which is not accepted by the respondent company. On the aforesaid basis the petitioners are claiming a balance amount of Rs.2,07,32,232/-.

5. The respondent company has contended that in respect of the present claim the plaintiff has already filed a suit before the Pune court being Special Civil Suit no. 111 of 2002. To the said suit a written statement cum counter claim has been filed by the respondent company inter-alia contending that the rate which has been claimed is not the agreed rate between the parties and the agreed rate is a different rate. It is contended that the per room rate agreed was settled at Rs.2,10,000/- whereas the claim made by the petitioner is of Rs.2,25,509/-. It is also contended that the work which has been carried out is of a sub-standard and that there were defects which have not been rectified by the respondent company though pointed out from time to time. It has been contended that in view of the aforesaid fact the interior decoration carried out in respect of a five star hotel is sub-standard. It has also been contended that it is necessary to maintain

particular standard of interior decoration since the respondent company is running a five star hotel. In the circumstances the company has denied the liability to make the payment.

6. In my opinion the fact that there is no written agreement between the parties and there is a dispute as to the rate which was fixed by and between the parties as well as the disputes pertaining to the additional work carried out in respect of each room raises a bonafide dispute on behalf of the company. Apart therefrom even the time limit is fixed within which work should be completed. It is the case of the respondent company that there is a substantial delay resulting in losses to the respondent company. I find that the disputes were raised from time to time. There are also disputes in respect of the computation in the final bill. In my opinion it is not possible to order a winding up of the company for such a disputed claim. In view of the aforesaid position it is not possible to entertain the present company petition. I accordingly dismiss the same.

sd/-

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